LEE A. FITE
GREGORY FITE

IBLA 84-200 Decided July 2, 1984

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting desert land entry applications. N-23935 and N-23936.
Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Water Right

A desert land entry application is properly rejected where the applicant fails to provide evidence of a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right.

APPEARANCES: Lee A. Fite, Gregory Fite, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lee A. Fite has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated November 15, 1983, rejecting his desert land entry application N-23936. An appeal similar in all respects has also been filed by Gregory Fite from a State Office decision of November 16, 1983, rejecting his application N-23935. In each case, appellants' separate applications were rejected because they were not accompanied by any evidence that the applicant had proceeded as far as possible to appropriate water for the purpose of irrigating his entry.

[1] Desert land entry applications N-23935 and N-23936 were filed on April 2, 1979, pursuant to the Desert Land Act, 43 U.S.C. § 321 (1982). That Act provides for the entry of desert lands for the purpose of reclaiming them "by conducting water upon the same * * * Provided, however, That the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation." The pertinent regulation, 43 CFR 2521.2(d), provides that no desert land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right.

In answering question 12(b) of the application to enter, each appellant responded "no" to the query whether he had proceeded as far as possible toward acquiring by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim permanently all of the irrigable portions of each of the legal subdivisions applied for. A disclosure statement accompanying each application states that the Nevada State Water Engineer's Office was contacted regarding the procedure for filing the necessary applications to obtain water rights. Despite this contact, the case files contain no evidence that an application to obtain water rights was filed prior to BLM's decisions of November 1983.

In Stanley C. Cheledinas, A-27985 (Aug. 3, 1959), the Department rejected an application similar to appellants because the applicant, seeking to irrigate his entry from underground water sources by well, failed to show at the time of filing his application that he had acquired a right from the State to appropriate underground water or that he had taken steps, as far as then possible, to initiate such a right. Accord, Elmer A. Kubler, 80 IBLA 283 (1984); James Neil Fletcher, 78 IBLA 330 (1984).

In their statement of reasons, appellants contend that at the time of submission of their applications, there was no stipulation that water rights were a requirement for approval of such applications. Appellants are clearly incorrect in this contention. The regulation calling for such a requirement and cited by BLM in its decisions, 43 CFR 2521.2(d), has been in its present form since at least June 13, 1970. Persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insuance Corp. v. Merrill, 332 U.S. 380 (1947); James Neil Fletcher, supra at 332.

Appellants also state that in response to BLM's decisions applications have been filed for underground water with the State of Nevada. Although such applications may prove helpful for any future desert land entry applications appellants may file, rejection of applications N-23935 and N-23936 was proper when rendered. James Neil Fletcher, supra at 332. Such rejection, however, is not prejudicial to appellants' right to file new applications with evidence of their newly initiated efforts to obtain a sufficient water right.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.,
Administrative Judge

Will A Irwin
Administrative Judge